No. 81-38

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SUPREME COURT
OF THE UNITED STATES
October Term 1981

MARY ELLEN CRAWFORD, A MINOR, etc., et al.,

Petitioners,

vs.

BOARD OF EDUCATION OF THE CITY OF LOS ANGELES

ON WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT

BRIEF OF AMICI MEMBERS OF THE BAR OF THE STATE OF CALIFORNIA

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Pursuant to Rules 35 and 42(1) of the Rules of this Court, amici respectfully file their petition for leave to file their Brief in support of the Petitioners. The Written consents of all parties hereto are filed with the Clerk of the Court concurrently herewith.

INTEREST OF AMICI

The signers of this brief are residents of the Los Angeles area and members of the California Bar. Their interest in this case is twofold.

As residents of the Los Angeles community, they are deeply concerned with the education of the children of the area and with their right to substantially equal educational opportunity in the public schools here.

As members of the Bar, they are equally concerned with the preservation of the constitutional right of those children in their pursuit of an education. Cognizant of their duties as officers of the Court, they deem it incumbent upon them to express their views to this Court.

BY REASON OF THE RACIALLY SEGREGATED RESIDENTIAL PATTERNS PREVAILING IN LOS ANGELES, LARGELY CREATED BY STATE ACTION, PROPOSITION ONE HAD, AND WAS INTENDED TO HAVE, A RACIALLY DISCRIMINATORY EFFECT.

1. The Racial Restrictive Covenant and the Creation of Racially Segregated Residential Patterns in Los Angeles.

The crux of the problem in eliminating the dual school

system found in **Crawford v. Board of Education**, 17 Cal. 3d 280, 287, n1, n2 (1976) lies in the sharply delineated racial segregation of residential areas in Los Angeles and the distances between them. (JA 368). It has been uncontested in the Crawford litigation that the vast bulk of the black children live in the Central Avenue-Watts area, of the Chicano children in the Los Angeles east side and of the white children in the west and north sides. That segregation has long historical antecedents and it was implanted upon the city by state enforcement of racial restrictive covenants.

Continuously until 1948 the courts of California enforced as covenants running with the land agreements and deed restrictions forbidding use or occupancy of residential property by non-Caucasians, including persons of Mexican descent. **Los Angeles Investment Co. v. Gary** (1919), 181 Cal. 680, 683-684 [186 P. 596,] 9A.L.R. 115; **Wayt v. Patee** (1918), 205 Cal. 46, 49-50 [269 P. 660]; **Littlejohns v. Henderson** (1931), 111 C.A. 115, 118 [295 P. 95]; **Letteau v. Ellis** (1932), 122 Cal. App. 584, 587 [10 P. 2d 496]; **Stone v. Jones** (1944); 66 C.A. 2d 264, 269 [152 P. 2d 19]; **Shideler v. Roberts** (1945), 69 C.A. 2d 549, 557 [160 P. 2d 67]; see also **Fairchild v. Raines** (1944), 24 Cal. 2d 818, 827 [151 P. 2d 260]. Indeed, one decision held that such enforcement and the consequent development of slum conditions in areas available for non-Caucasian use, including overcrowding, dilapidations and disease, did not contravene the "Public Policy" of the state or nation. **Burkhardt v. Lofton** (1944) 63 C.A. 2d 230, 239, [146 P. 2d 720].

The use and enforcement of the racial restrictive covenant has been described as "in the field of residence, the end result of that impulse toward racial segregation which arose in the post-reconstruction period and has continued almost unabated down to our time." (Miller — **Covenants for Exclusion,** 36 Survey Graphic 541 (1947).) It is uncontrovertible that such covenants were so conceived in Los Angeles and its environs. The in-migration of blacks assumed substantial proportions in the decade of the 30's, amounting to 25,000. By 1927 the Los Angeles Realty Board adopted a policy of not selling residential property to non-Caucasians in areas of Caucasian occupancy, and a survey by the California Real Estate Association disclosed that it was the general opinion of real estate boards in the state that deed and covenant restrictions were the best way to keep non-Caucasians out of the Caucasian districts. (Helper — **Racial Policies and Practices of Real Estate Brokers,** University of Minn. Press, 1969, p.229.) In the same year, the Los Angeles Realty Board acquired from the National Association of Real Estate Boards forms for such restrictions, and Los Angeles was one of the cities in California where "practically all subdivisions had restrictions to protect them as far as possible from future depreciation through encroachment of a foreign race." (Idem.) It was, of course, these objectives that the course of decision of the California courts referred to above realized in enforcing the restrictions as mere private agreements.

The "Black Belt" was "consolidated" in Los Angeles by 1940 in the Central Avenue area where "about two-thirds of the Negroes" were concentrated. (Weaver — **The Negro Ghetto,** Harcourt Brace, 1948, pp 63-65.) With the rapid expansion of the black population in the World War II years (at the rate of 78.2%, Idem) the black belt grew heavily in density but only slightly geographically in the south side of the city to include the Central Avenue area, Watts and a small area called "Little Tokyo" which had been evacuated by the forced war-time removal of Japanese residents. (Idem., pp 87-88.) The geographic dimensions of these areas were determined and constrained by the "[w]idespread incidence of race restrictive covenants." (Idem p. 85.)[1]

Following World War II there was a sharp intensification of efforts to promote racial restrictive covenants, the points of emphasis being in the middle income areas surrounding the black belt and in new subdivisions. (Weaver — *op Cit,* p.246.) The California courts continued to enforce those restrictions until this court's decision in **Shelley v. Kraemer** (1948) 334 U.S. 1. Thereupon, in cases pending before the California Supreme Court since before **Shelley,** that court complied with the constitutional imperative there declared. **Cummings v. Hokr** (1948) 31 Cal. 2d 844; **In re Laws** (1948) 31 Cal. 2d 846.

1. Efforts to provide new housing for blacks were effectively blocked by FHA policy which refused to insure loans on homes for black occupancy (Idem pp. 217-218) and which required race restrictions in subdivision deeds of property to be used by Caucasians. (Miller — **A Right Secured,** 166 Nation 599, 1948.) In the latter respect, FHA furnished a model race restriction clause for builders and subdividers during the period 1935-1947. (Idem.)

The enforcement of the racial restrictive covenant over the years prior to 1948 confined the non-Caucasian urban population (and this has historically included those of Mexican descent as well as blacks; see Weaver —*(op cit.)* p. 246; Burns and Harman **The Complex Metropolis**, Part 6 of the **Profile of the Los Angeles Metropolis**, Housing, Real Estate and Urban Land Studies of the Graduate School of Business Administration, UCLA pp. 67, 75) to the ghettos of Central Avenue-Watts and the Eastside. (Weaver — *op cit.*, p.85; Burns and Harman, Ibid.)

So firm had these patterns become that the McCone Commission investigating the factors involved in the Watts Riots of 1965, found that 88.6% of Los Angeles blacks then lived in "Southcentral Los Angeles," that is, Central Avenue-Watts. (**Violence in the City — An End or a Beginning**, Report of the Governor's Commission on the Los Angeles Riots, December 2, 1965, p.75.) That body also found that the geographic expansion of the black population during and after World War II had been prevented and later impeded by the racial restrictive covenants and the segregated residential patterns their enforcement had implanted on the community. (Idem. pp. 76-77.) The racially segregated residential patterns here described were also found in 1967. (Burns and Harman, *op cit.*, p. 75.) And, as observed at the outset of this brief, the same pattern of racial residential segregation was shown by the undisputed evidence at the trial of this action[2] as well as during the

2. The Crawford litigation was begun August 1, 1963. The trial court's findings and order were entered in May 1970. (17 Cal. 3d at 287).

proceedings designed to fashion a desegregation plan in order to implement the mandate of the California Supreme Court in this proceeding. Those patterns, then, are incontrovertibly products of state action in enforcing and imposing the racial restrictive covenant upon the community.

2. The Purposely Racially Discriminatory Effect of Proposition One As Applied to the Existing Residential Segregation by Race.

What has been said so far shows, and indeed there is no dispute about this in these proceedings, that in Los Angeles the dual school system is based upon racially segregated residential areas. (See JA 369.) Since these areas were created by state action, the dual school system resulting therefrom constitutes purposeful segregation resulting from state action within the meaning of **Washington v. Davis,** (1976) 426 US 229, 240, or "intentionally segregative action" as defined and applied in **Dayton Board of Education v. Brinkman,** (1977) 433 US 406, 413. While Respondents here may claim that the Board of Education did not itself create the segregated residential patterns, it is plain that they were created by other state agencies (the courts), and the Board, itself a state subdivision, of necessity included that pattern in its delineation of attendance areas and location of school facilities. Thus is shown its "specific intent to discriminate" (Opinion p. 21A)[3] within **Swann v. Charlotte — Mecklenburg** (1971) 402 U.S. 1.

3. This refers to the opinion below as appended to the Petition for Certiorari.

Nor is this dual school system the fortuitous result of "population movements" (Opinion, p. 36A) resulting from the preferences of individual citizens. It results from carefully fostered residential segregation on racial lines enforced and induced by state action. We submit the Board's school siting and creation of its attendance areas was not mere "passive maintenance . . . in the face of widespread residential imbalance" (Opinion, p. 35A), for it incorporated and built upon the specific segregative intent and discriminatory purposes of the racial restrictive covenants enforced by the state's courts.

But the significance of this plainly purposeful racial segregation and residential pattern bears directly upon the purposes and effects of Proposition One. There are considerable intraurban distances between all or virtually all Black Watts and White or virtually all White San Fernando Valley, just as between the eastside Chicano community and the westside Anglo areas. (See JA 344.) Busing is obviously a necessary tool for achieving the degree of integration necessary to eliminate the dual school system. It is to be assumed that facts of such general knowledge were as well known to the Legislature and the electorate, as to Bustop (Intervenor below) and its allies in the effort to stop "forced busing" which culminated in the adoption of Proposition One. (See **Seattle School District No. 1 v. Washington,** 473 F.Supp. 996, 1015 (WD Wash., 1979) aff'd on other grounds, 633 F.2d 1338 (C.A.9, 1980).California's consti-

tutional amendment, then, was knowingly and purposely directed at depriving non-Caucasians of the remedy of busing in order to achieve desegregation — or at least to impose upon them the burden[4] of proving specific intent to discriminate in order to obtain protection of the state's equal protection clause. This occurred, of course, in circumstances where a judicially found dual school system (established de jure as shown above) was in the process of desegregation using, among other essential tools, busing of students to and from the schools in all the residentially segreagated areas. Those who seek the protection of California's equal protection clause for purposes of eliminating the dual school system have been differentiated from those invoking that clause in other contexts.

From the foregoing, conclusions of determinative constitutional significance are compelling: (1) that racially discriminatory purpose was at least one important motivating factor in the adoption of Proposition One and thus leads to its infirmity under the federal equal protection clause **Village of Arlington Heights v. Metropolitan Housing Development Corporation** (1977) 429 US 252, 265-266, 270 n21; (2) that such purpose is manifest from the "historical context" and the "conditions existing prior" to the adoption of Proposition One as well as the "immediate objective" and the "ultimate effect" thereof and thus offends equal protection within the analysis employed in **Reitman**

4. The massiveness of that burden was recognized in **Keyes v. School District No. 1** (1973) 413 U.S. 189, 234-235, Powell, J. concurring.

v. Mulkey, (1967) 387 US 369, 373. It was for such purpose that the rights of non-Caucasian children to invoke the remedies under the California Constitution were so heavily burdened. The case would therefore seem governed by the principles enunciated in **Hunter v. Erickson,** (1969) 393 US 385 and applied on facts closely apposite here in **Seattle School District No. 1 v. State of Washington,** 633 F.2d 1338, 1344 (C.A. 9 1980).

CONCLUSION

Proposition One should be found to be the vehicle for carrying forward a shameful community pattern of racial segregation and discrimination. It should be held violative of the equal protection clause of the federal constitution and the case remanded to the California courts for purposes of working out reasonable and meaningful integration of the Los Angeles school system.

Respectfully submitted,

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PROOF OF SERVICE

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) ss:
COUNTY OF RIVERSIDE)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 612 North Bush Street, Santa Ana, California 92701.

On December 23, 1981, I served the within BRIEF OF AMICI MEMBERS OF THE BAR OF THE STATE OF CALIFORNIA on the interested parties in said action, by placing a true copy in each of 7 sealed envelopes, with postage thereon fully prepaid, in the United States mail at Santa Ana, California, addressed as follows:

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I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED on December 23, 1981, at Santa Ana, California.

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